UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK JOHN RICHARD,   Case No.: 21-12064
                                    Plaintiff,

v.   Linda V. Parker
                                             United States District Judge

THOMAS HAYNES,
                                    Defendant.   Curtis Ivy, Jr.
_____/   United States Magistrate Judge

ORDER ON MOTIONS (ECF Nos. 29, 36, 38)

This Order addresses three pending motions—two filed by Plaintiff and one

by Defendant Haynes. Plaintiff filed this case on August 26, 2021, without the

assistance of counsel. (ECF No. 1). Thomas Haynes is the only remaining

defendant with one claim remaining against him—allegedly forcing Plaintiff to

sign an agreement or risk losing his prison job and being transferred to a different

prison facility. (ECF Nos. 25, 32).

A.   Plaintiff's Motion to Amend Complaint (ECF No. 27), Haynes' Motion to
      Stay the Motion to Amend (ECF No. 29), and Plaintiff Motion to Amend
      Complaint (ECF No. 38)

The undersigned issued a report and recommendation to dismiss some

claims and defendants for Plaintiff's failure to exhaust his administrative remedies

before filing suit. (ECF No. 25). While that report and recommendation was

pending, Plaintiff moved for leave to file a second amended compliant to add two

new defendants. (ECF No. 27). Because the report and recommendation was still

pending, Haynes moved to stay a ruling on the motion to amend until the Court ruled on the report and recommendation. (ECF No. 27).

The Court adopted the report and recommendation on September 8, 2022. (ECF No. 32). Thus, the motion to stay is **DENIED AS MOOT**. Haynes must **file a response** to Plaintiff's motion to amend (ECF No. 27) **on or before November 16, 2022**. Plaintiff may file a reply brief **on or before November 30, 2022**.

On October 28, 2022, Plaintiff filed what he called a motion to amend his complaint. (ECF No. 38). There, he essentially asks the Court to rule on his first motion to amend rather than stay a ruling. This motion is **TERMINATED** as unnecessarily filed. Once the Court receives the parties' briefs on Plaintiff's motion to amend the complaint at ECF No. 27, the Court will issue a ruling.

B.   Plaintiff's Motion for Transmission of Court Records (ECF No. 36)

On October 17, 2022, Plaintiff filed a notice of appeal of the Court's Opinion adopting the report and recommendation discussed above (ECF No. 33), an application for leave to proceed *in forma pauperis* on appeal with an affidavit (ECF No. 34), and moved the Court to transcribe the electronic record of this case and submit it to the Sixth Circuit Court of Appeals (ECF No. 36). In a report and recommendation that will be filed separately, the undersigned suggests that Plaintiff's application for leave to appeal *in forma pauperis* be denied because the

appeal would not be taken in good faith. The request for transmission of the

District Court record is also **MOOT** because when a case is appealed, the appellate

court has access to the District Court electronic record. The record is not

separately transmitted to the appellate court.

IT IS SO ORDERED.

The parties here may object to and seek review of this Order, but are

required to file any objections within 14 days of service as provided for in Federal

Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as

error any defect in this Order to which timely objection was not made. Fed. R.

Civ. P. 72(a). Any objections are required to specify the part of the Order to which

the party objects and state the basis of the objection. When an objection is filed to

a magistrate judge's ruling on a non-dispositive motion, the ruling remains in

effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich.

Local Rule 72.2.

Date: November 3, 2022   s/Curtis Ivy, Jr.
                                               Curtis Ivy, Jr.
                                               United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on November 3, 2022.

<u>s/Kristen MacKay</u>
Case Manager
(810) 341-7850